THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.11900 OF 1996

ORDER:

Questioning the proceedings of the 1st respondent dated 07.06.1996, whereby the petitioner, Stores Assistant in the 1st Respondent Corporation, was reverted to the lower Cadre of Junior Assistant, and the period of suspension prior to reinstatement was treated as leave to which he was eligible, the present writ petition is filed. During the pendency of the writ petition before this Court, the appeal preferred by the petitioner was examined by the Board of Directors of the respondent Corporation and on 03.12.2002 the punishment imposed by the 1st respondent was modified to that of reversion as Junior Assistant for a period of five years. The petitioner filed W.P.M.P.No.19059 of 2005 seeking amendment of the prayer in W.P.No.11900 of 1996 to include a challenge to the said order of the Board of Directors dated 03.12.2002 which was communicated to the petitioner on 21.12.2002. A common order is being passed in W.P.M.P.No.19059 of 2005 and W.P.No.11900 of 1996.

Facts, to the extent necessary for this writ petition, are that on 27.08.1992 when the petitioner was working as Senior Assistant in the office of the 2nd respondent, revenue officials intercepted a lorry, carrying rice meant for the Tribal Welfare Hostels to be distributed by the 2nd respondent Corporation, on the suspicion that they were being diverted to the black market. The stock of 205.45 quintals of rice was seized, a case was registered under Section 6-A of the Essential Commodities Act and having held that no orders of release had been obtained from the Mandal Revenue Officer, the District Collector passed an order confiscating the stock, against which, an appeal was filed before the District Judge.

The 1st respondent appointed an Enquiry Officer, vide proceedings dated 24.05.1994, and the Enquiry Officer issued a charge memo dated 20.08.1994 calling upon the petitioner to submit his explanation in respect of four charges. On receipt of the petitioner's explanation, dated 08.09.1994, the Enquiry Officer is said to have submitted his report on 24.10.1994 holding that charge Nos:1 and 2 were dropped

and that charges 3 and 4 were held proved. On the basis of the report of the Enquiry Officer, a provisional show cause notice was issued on 03.11.1995 calling upon the petitioner to show cause as to why he should not be reverted back, from the post of Senior Assistant, to that of the Junior Assistant. The petitioner submitted a representation on 14.12.1995 seeking further time to file his explanation upto 30.12.1995, and submitted his detailed explanation on 29.12.1995 by Registered Post with acknowledgment due. However, the 1st respondent, holding that the explanation submitted by the petitioner had not been received, passed final orders vide proceedings dated 19.03.1996, a copy of which was served on the petitioner on 11.04.1996, confirming the punishment proposed in the show cause notice, and as a result the petitioner was reverted from the post of Senior Assistant to that of a Junior Assistant and the period of his suspension was treated as leave, to which he was eligible.

The petitioner filed W.P.No.8116 of 1996, which was admitted on 17.04.1996 and notice was ordered therein. The respondents, passed the present impugned order dated 07.06.1996, (a copy of which was served on the petitioner on 14.06.1996), after considering the petitioner's explanation submitted on 14.12.1995. However the punishment, proposed in the show cause notice dated 03.12.1995, was confirmed. The said order of punishment dated 14.06.1996 is challenged in this writ petition, amongst other grounds, that no oral enquiry was held, that the impugned order is based on no evidence, that the order was passed in a routine and mechanical manner, that the order of punishment was passed by the Vice Chairman and Managing Director who is the appellate authority and that it is vitiated by non-application of mind.

An additional affidavit was filed, in the writ petition, by the petitioner as affirmed on 22.10.2000, wherein it is stated that the impugned order was passed by the Chairman and Managing Director, who is the appellate authority and since it is not open to an appellate authority to pass the original order of punishment, the order of punishment stands vitiated. It is also contended that the charge sheet is based on the report of the Collector, a copy of which was never furnished to the petitioner either at the time of issuing of the charge sheet or subsequent thereto. It is also submitted that at the time of enquiry, no witnesses were examined or cross-examined or allowed to be cross examined by the petitioner, despite his specific denial of the charges and his request to have an oral enquiry. Allegations of

malafides and bias are also attributed to the respondents.

In the writ petition, a counter affidavit was filed by the respondents, after the writ petition was taken up for final hearing, on 02.07.2005. Though the counter affidavit was filed more than nine years after the writ petition was filed, and Rule 12(ii) of the Writ Proceeding Rules 1977 requires the counter affidavit to be filed within six months, in the interest of justice, the counter affidavit has been taken on record and the contentions raised therein are also being considered.

It is the case of the respondents, in their counter affidavit that, during the pendency of the writ petition, the petitioner had availed the remedy of an appeal and had filed an appeal before the Board of Directors on 08.07.1996, that the Board of Directors had examined the appeal and passed an order dated 07.06.1996, modifying the impugned order by resolution 133/2002-2003, dated 03.12.2002, that the same was communicated to the petitioner vide proceedings dated 21.12.2002, and that a copy of the said order was served on the petitioner on 15.01.2003. It is contended that since the original order of punishment dated 07.06.1996 has merged with the appellate order dated 21.12.2002, the original order no longer survives and in the absence of any challenge to the order passed by the appellate authority, the writ petition is liable to be dismissed as infructuous

Pursuant thereto W.P.M.P.No.19059 of 2005 is filed, along with an additional affidavit, seeking amendment of the prayer and for a direction to set aside the proceedings dated 21.12.2002.

Taking up W.P.M.P.No.19059 of 2005 first, in the affidavit filed along with the said W.P.M.P, it is stated that despite the order passed by the appellate authority on 21.12.2002 the said order was not given effect to and even as on date, the petitioner was drawing the salary of a Junior Assistant. It is stated that in the Appeal, preferred against the order passed by the District Collector under Section 6-A of the Essential Commodities Act, the petitioner was acquitted by the learned District Judge and on submission of the representation by the petitioner, the respondents, vide order dated 26.12.2003, had informed him that since the matter is pending before this Court, he has to await orders to be passed in the writ petition. It is further stated that since the said appeal was allowed by the District Judge, pending writ petition before this Court, the petitioner was of the view that the order of the appellate authority dated 21.12.2002 was also subject to the result of the writ petition and it is only after being

advised by his Counsel that the present W.P.M.P. is filed to amend the prayer to include a challenge to the order of the appellate authority also. It is stated that the delay, in filing the W.P.M.P., seeking amendment of the prayer, was due to the petitioner's erroneous understanding that he was not required to amend the prayer, that any action of the respondents would be subject to the result of the writ petition and that the delay in seeking amendment of the prayer was therefore neither wanton nor deliberate.

The order of the appellate authority, dated 21.12.2002, is also questioned on the ground that the entire action is vitiated since no enquiry was conducted, no opportunity was given to the petitioner to cross examine the witnesses and further more no witnesses were examined on behalf of the respondent Corporation to establish the charge leveled against the petitioner. It is also stated that if the Mandal Revenue Officer or the District Collector had been permitted to be cross examined it could have been brought out that no permission was required to be obtained from the Mandal Revenue Officer. It is also stated that the petitioner was not being paid the salary attached to the post that he was required to be paid, on completion of the period of reversion as Junior Assistant, and since the original punishment was imposed in 1996 the five year period ended by 2001 and from 2001 the petitioner ought to have been posted as Senior Assistant, and given the scales attached to the post with all consequential benefits and denial thereof was illegal and contrary to law.

A counter affidavit is filed to this W.P.M.P. by the respondents, wherein it is stated that despite the petitioner being aware of the appellate order passed by the Board of Directors on 21.12.2002 and a copy of the said order having been served on him, the petitioner had not chosen to challenge the order of the appellate authority. Reference is made to the fact that even before the appeal could be finalized, the petitioner had indulged in another case of misappropriation of the funds, of the respondent Corporation, to a tune of Rs.46,742.30Ps, by making fictitious entries in the stock register, for which the petitioner was placed under suspension, a detailed enquiry was conducted, that the Enquiry Officer had submitted his report on 09.07.1997 holding that the charges against the petitioner were proved, and the provisional conclusion order was issued on 16.08.1997 asking the petitioner to show cause as to why he should not be imposed the punishment of dismissal. However, the Vice Chairman and Managing Director of the Corporation is

said to have taken a lenient view by imposing the punishment of reduction in pay to the minimum in the scale existing, for a period of five years without cumulative effect, by order dated 04.04.1998. Questioning the said order, the petitioner is said to have preferred an appeal before the Board of Directors who, after considering the appeal, are said to have been of the view that the punishment imposed on the petitioner is not adequate in view of the gravity of the offence committed by him and as such the punishment imposed on the petitioner was enhanced to reduction of pay to the minimum of the scale for five years with cumulative effect and the same was communicated, to the petitioner, by the Vice Chairman and Managing Director, vide proceedings dated 08.11.2002. It is stated that after the Divisional Manager had sent proposals, in respect of the petitioner, for pay fixation, consequent to the two punishments, the pay of the petitioner was fixed by the General Manager (Admn.) at Rs. 2,750/-, with effect from 07.06.1996, and that the petitioner was entitled to draw the pay of Rs.3,200/- in the reverted post of Junior Assistant upto 06.06.2001 on which date the petitioner had completed five years of punishment as Junior Assistant. It is stated that, after completion of the reversion period of five years, the petitioner was restored to his original position i.e., in the post of Senior Assistant with effect from 07.06.2001 and his pay was fixed at Rs.3,650/- in the said post. It is further stated that consequent on the petitioner being awarded punishment, of reduction of his pay to the minimum of the scale for five years with cumulative effect, pursuant to the order of the Board of Directors, his pay was fixed at Rs.2,195/- upto 31.12.2002 and on 01.01.2003 the petitioner was also given the benefit of revised pay scales of 1999 and his pay was revised to Rs.4,190/- in the time scale of Rs.4,190/- till completion of five years from 08.11.2001. It is further stated that the next promotion of the petitioner from the cadre of Senior Assistant is to that of a Junior Manager and that the selection committee considered the same and rejected the case of the petitioner, vide proceedings dated 27.04.2005, due to pendency of punishment which the petitioner was undergoing. It is contended that though the petitioner was aware of all these facts he had filed a false affidavit before this Court and that he is liable for perjury. It is also contended that the petitioner cannot be permitted to amend his prayer at this length of time without giving proper and cogent reasons, that the petitioner had approached this Court belatedly and that the W.P.M.P. seeking amendment of the prayer is liable to be dismissed for latches. It is further contended that no proper explanation was forthcoming from the petitioner explaining the latches on his part, and it is only after the counter affidavit was filed

before this Court in the writ petition, that the petitioner had come up with the amendment petition, which prayer ought not to be permitted. It is also stated that mere acquittal in the criminal case would not have any bearing on the proceedings initiated by the department and this could not be a ground for filing the W.P.M.P. seeking amendment of prayer after a lapse of 2 ½ years of the orders being passed.

Insofar as the contention of latches is concerned, it is true that the order of the appellate authority dated 03.12.2002, as communicated by the order of the 1st respondent dated 21.12.2002, is now being challenged, more than 2 ½ years after the said order was passed. The explanation given by the petitioner thereto is that it was a case of his misunderstanding of the legal position and since he was of the view that the order of the appellate authority is also subject to the result of the writ petition, he had not challenged the order passed by the appellate authority. It is only on legal advice that the said order was being challenged.

I am not inclined to accept the plea of latches urged on behalf of the respondents inasmuch as the counter affidavit filed by them in the writ petition in July 2005, is nine years after the writ petition has been filed in 1996. The counter affidavit has been taken on record though, under Rule 12(ii) of the Writ Proceeding Rules 1977, a counter affidavit cannot be filed without leave of the Court, six months after the writ petition is filed. Having been permitted to file a counter affidavit, after an inordinate delay of nine years, it is not open to the respondents to plead latches on the part of the petitioner in seeking amendment of the prayer and in seeking to deny him the opportunity of challenging the order of the appellate authority also.

The other plea is that in the affidavit, filed along with W.P.M.P, the petitioner had made false averments and had committed perjury. An additional affidavit has been filed in the W.P.M.P, in reply to this contentions of the respondents, wherein the petitioner has stated that he had no intention whatsoever to mislead this Court and that as per the memos issued to him he had come to such an understanding and in case the Court is of the view that the averments made by him, in the affidavit filed in support of W.P.M.P.No. 19059 of 2005, were not correct, he sincerely apologised for the same. Explaining the averments, which the respondents have alleged to be false, the petitioner states that despite the five years period of suspension having lapsed, the petitioner is still being treated as a junior assistant and in the pay slips

issued to him, his designation was shown only as a junior assistant. Along with the additional affidavit, the petitioner enclosed the pay slips of the months of July, 2005 and December 2004 wherein his designation has indeed been shown only as a Junior Assistant. Petitioner submits that in view thereof he was under the impression, which is borne out from the record, that the respondents were still treating him as a Junior Assistant. Reference is also made to the memo dated 26.12.2003 issued by the respondents wherein his designation is shown as Junior Assistant only. It is further stated that in all the correspondence/memos issued to him, the petitioner was referred to as Ex. Junior Assistant and, as instances thereof, the petitioner filed copies of the memo dated 27.10.2004 wherein the petitioner is referred to as Ex-Junior Stores Assistant and to the memo dated 28.01.2005 wherein the petitioner was referred to as Ex-Junior Assistant. It is stated that in almost all the correspondence, the petitioner had never been treated as a Senior Assistant and in view thereof the petitioner's understanding was that he was still being treated only as a Junior Assistant. It is further stated that the petitioner underwent Angiogram in December 2004 due to heart problem and since he was not keeping good health, it is possible that he might have misunderstood, because of the communication, which he has received from the respondents. Petitioner submits that he has no intention to deceive this Court. The petitioner reiterates that these averments were neither deliberate nor wanton and sincerely prays that this Court may take a lenient view of this matter in view of his age and failing health.

Where a person finds that he has made a false statement in an affidavit, albeit mistakenly, it is his duty to correct it and to do so promptly and frankly. It is of greatest importance to the administration of justice that Courts should be able to rely on the truthfulness and accuracy of affidavits. It is essential that affidavits are prepared with proper care and that mistakes do not occur. It is also essential that deponents of such affidavits attach the greatest importance to their oath and when they find that they have made a false statement on oath, they should be at pains to correct it. (**The Nordglint: 1988(2)All ER at 535**)

From the aforementioned facts, it is clear that though the petitioner had been restored as a Senior Assistant, on completion of the period of punishment of five years, in his pay slips and other correspondence he was continued to be addressed as Junior Assistant/Ex-Junior Assistant. In such circumstances, the averment in the affidavit that the petitioner was not restored to the post of Senior Assistant or paid

salary attached to the said post could indeed, as stated by the petitioner, be a case of his erroneous understanding of the situation. In any event, the petitioner has filed an affidavit expressing regret for the said averments. The apology tendered by the petitioner is accepted, the amendment petition in W.P.M.P.No.19059 of 2005 is ordered and necessary amendments shall be carried out in the main writ petition to include a challenge to the order of the Board of Directors dated 03.12.2002 which was communicated to the petitioner on 21.12.2002.

Now the writ petition. Though several contentions have been raised, I do not propose to examine any of them, since the writ petition is required to be allowed on the short ground that no departmental enquiry was conducted to establish the charge. Despite the petitioner's specific request that an oral enquiry be held, no such enquiry was conducted, witnesses were not examined in his presence, he was not permitted to cross examine any witness nor was he given an opportunity to produce witnesses in his defence. It is well settled that imposition of a major penalty has necessarily to be preceded by a departmental enquiry and, in the absence of admission of guilt, it is for the Employer to establish the charges leveled against the Employee and in the absence of any departmental enquiry being held, the punishment imposed would stand vitiated.

In **State of Mysore v. Shivabasappa Shivappa,** the Supreme Court held thus:

> "……..For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts."
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> "……. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will

> have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them."

Despite a specific plea, that no oral enquiry was held, except for a bald averment that the enquiry was held, the counter affidavit is silent regarding this plea. As such the records were called for, Sri. N. Sridhar Reddy, learned Standing Counsel, would fairly submit that the records do not disclose any oral enquiry having been held to enquire into the charges leveled against the petitioner. Since it is clear that no oral enquiry has been held to establish the charges leveled against the petitioner, nor was the petitioner given adequate opportunity to defend himself which the respondents were bound to provide in compliance with principles of natural justice, the order of punishment is liable to be set aside. In the absence of an oral enquiry being held, the punishment imposed by the Vice Chairman and Managing Director (original authority) as modified by the Board of Directors of the Respondent Corporation, (Appellate Authority), stand vitiated and are hereby set aside. It is however made clear that the respondents are not precluded from holding departmental enquiry, and to take action against the petitioner, in accordance with law.

The writ petition is allowed. There shall however be no order as to costs.

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RAMESH RANGANATHAN, J

Date: .09.2005

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